# California Department of Insurance

## *2004 Long-Term Care Outline*

**TOPICS TO BE INCLUDED IN 8-HOUR LONG-TERM CARE COURSES**

## OVERVIEW

The following outline is a listing of the topics that must be addressed as part of all 8-hour tax-qualified long term care (LTC) insurance courses designed to meet the requirements of the California Insurance Code (CIC) §10234.93(a)(4).

## EDUCATION OBJECTIVES

Each topic must be developed in its entirety and should explain (not merely recite) chaptered legislation and pertinent regulations. Each topic should ***include an explanation of*** why they are significant to the agent and client. The subjects do not need to be presented in this outline order. However, they do need to be developed in a clear and meaningful manner so that the student derives a clear understanding of the pertinent issues and implications. All statistical information and points of fact must be referenced to the original source data.

Examples are encouraged to illustrate points and concepts.

For contact courses, the topics need to be articulated in writing to the extent that the student can relate the words of the instructor to the course material in a meaningful way. For correspondence courses, each topic must be developed in full so that the reader can get an understanding of the material as if he or she was in a contact course.

Discussion of topics must be handled in a neutral manner. These courses should ***NOT***:

- Use the opportunity to persuade;
- Indoctrinate or enlighten agents on a particular philosophy or a political or public policy position; and,
- Opinions about state or federal legislation or forecasting the success or failure of legislation should not be included in these courses;
- No marketing information is allowed in LTC courses;
- Copyright material cannot be inserted or attached to the course material without proper references; and,

## TOPICS TO BE INCLUDED IN 8-HOUR LONG-TERM CARE COURSES

- Attachments to the course material cannot contain the information noted in the above bulleted items.

***These courses should not be used as an opportunity to persuade, indoctrinate or enlighten agents on a particular philosophy, a political or a public policy position. Opinions about state or federal legislation or forecasting the success or failure of legislation should not be included in these courses. Moreover, absolutely no marketing information is allowed in LTC courses.***

You are required to demonstrate the following:

- Provide a detailed understanding of all the topic areas;
- Show continuity of explanations in the course textbook, examples, references, and citations;
- Provide easy to read text. Rather than seemingly unrelated pieces of data, the text should have a narrative explanation of why/how parts fit together;
- Reach or state conclusions (i.e., why is this topic important and what does it mean for the policyholder);
- Substantiate information with material presented; and,
- Courses should be focused on needs of consumers and the problems and solutions associated with long-term care and long-term care insurance.

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Understanding of the following Long-Term Care legislation are significant. It provides the evolutionary changes for each law throughout the year.

It is important to know what impact the following pieces of legislation have had on long-term care insurance. To review or obtain copies of the following pieces of legislation, you may log onto the California Legislature's Web site at http://www.leginfo.ca.gov or you may call the Legislative Bill Room at (916) 445-2645 to order copies of this legislation.

In addition, the Sections 10231.-10237.6 of the California Code of Regulations also impact long term care insurance.

***Year: 1993***

**SB 1943** (Mello) Effective January 1993 Long Term Care Insurance:

- Provides that long term care insurance include insurance designed to provide that coverage, without restriction as to length of coverage, and also includes disability based long term care policies, and specifies that long term care benefits designed to provide coverage of 12 months or more that are contained in Medicare supplement or other policies is regulated
- Requires associations to be organized and maintained in good faith for a primary purpose other than obtaining insurance.
- Require associations to provide evidence that the required provisions of the constitution and bylaws have been consistently implemented.
- Requires certain groups to have a main resource source not related to the marketing of insurance, to have outreach methods to obtain new members not related to the solicitation of insurance and to provide benefits or services other than insurance, of significant value to its members.
- Requires any policy or certificate limited to institutional care to be called a nursing facility only policy or certificate, one limited to home care to be called a home care only policy or certificate, and would permit only those that provide both institutional and home care to be called comprehensive long term care insurance.
- Requires specific notice regarding untrue statements on an application.
- Provides that where an insurer does not complete medical underwriting and resolve all reasonable questions arising from information submitted on or with an application before issuing the policy or certification, then the insurer may only rescind the policy or certificate or deny an otherwise valid claim, upon clear and convincing evidence of fraud or material misrepresentation of the risk by the applicant.
- Provides that the contestability period is 2 years and that no long term care policy or certificate may be field issued.



- Requires long term care insurance that provides home health care benefits or home care or

community-based services to provide specific benefits.

- Provides that in every long term care policy or certificate that provide home care benefits, the threshold establishing eligibility for home care benefits shall be at least as permissive as a provision that the insured will qualify if either one of two specific criteria or combination of criteria to be substituted, if the insurer demonstrates that the interest of the insurer is better served.
- Provides that long-term care insurance may not provide for benefits based on standards described as "usual and customary" or similar words.
- Provides that if a policy replaces another long-term care policy the replacing insurer shall waive any time periods applicable to preexisting conditions and prohibitory periods to the extent that similar exclusions have been satisfied.
- Imposes requirements relating to marketing practices.
- Prohibits certain fair trade practices including cold lead advertising without disclosing that an insurance agent or company will make contact.
- Requires prior approval of certain advertisements.
- Requires agents to make reasonable efforts to determine the appropriateness of a recommended purchase or replacements.
- Requires every long term care insurer to file is commission structure or an explanation of the insurer's compensation plan with the Commissioner
- Providers for hearings before an Administrative Law Bureau and the Department of Insurance, except where a fine is over $100,000 in which case the Administrative Procedures Act would be applicable.
- Requires every insurer providing long term care coverage in California to provide a copy of any advertisement to the Commissioner for review at least 30 days before dissemination.
- Requires long term care insurers to establish marketing procedures, submit to the Commissioner a list of all agents and other insurer representatives authorized to solicit long term care insurance sales, and provide continuing education to those agents or representatives.
- Required notice to applicant containing specific information for replacement is to be signed by the agent.
- Requires long term care policies issued to individuals to be either guaranteed renewable or noncancelable.
- Requires group insurance to provide for continuation coverage for the certificate holder.
- Makes changes to the long term insurance act inapplicable to the California Partnership for Long Term Care Pilot Program.



***Year: 1997***

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**SB 1052** (Vasconcellos), Chapter 699, Statutes of 1997 Division 2., Part 2., Chapter 2.6 of the CIC:

- Requires every policy that is intended to be a qualified long-term care insurance contract as provided by federal law to be identified as such with a specified disclosure statement, and, similarly would require every policy that is not intended to be a qualified long-term care insurance contract as provided by federal law to be identified as such.
- Require insurers that offer policies or certificates that are intended to be federally qualified long-term care insurance contracts, including riders to life insurance policies providing long-term care coverage, to fairly and affirmatively concurrently offer and market policies and certificates that are not intended to be federally qualified long-term care. The bill would revise various definitions. Requires that a specific shoppers guide be provided to prospective applicants.
- Requires insurers to make certain reports regarding lapses and replacements.
- Requires that premium adjustments be made for replacement policies.
- Requires insurers and other marketers of long-term care insurance to utilize specified suitability standards.
- Requires that insurers provide notifications regarding denial of claims.
- Requires insurers to offer or provide certain rights and benefits in connection with long-term care insurance, including rights to increase and decrease benefits.
- Imposes requirements on inflation protection benefits.

**AB 1483** (Gallegos), Chapter 700, Statutes 1997 - Insurance: long-term care:

- Requires every policy that is intended to be a qualified long-term care insurance contract as provided by federal law to be identified as such with a specified disclosure statement, including riders to life insurance policies, and, similarly would require every policy that is not intended to be a qualified long-term care insurance contract as provided by federal law be identified as such.
- Requires insurers that offer policies or certificates that are intended to be federally qualified long-term care insurance policies to also fairly and affirmatively offer and market policies that are not intended to be federally qualified long-term care contracts.
- Sets forth eligibility criteria for policies and certificates intended to be qualified long-term care insurance contracts as provided by federal law as well as for policies and certificates that are not intended to be federally qualified.
- Revises various definitions.

## TOPICS TO BE INCLUDED IN 8-HOUR LONG-TERM CARE COURSES

**SB 527** (Rosenthal), Chapter 701, Statutes of 1997. Insurance: long-term care:

- Provides that if an insurer provides long-term care insurance intended to qualify for favorable tax treatment under federal law, the insurer shall also offer coverage that conforms to the current state eligibility requirements, as specified.
- Requires insurers to provide a specified notice at the time of solicitation, and a specified notice in the application form.

***Year: 1998***

**SB 1537** (Rosenthal) 1998. Long-term care insurance:

- Requires the Department of Insurance to adopt emergency regulations to require insurers offering both forms of policies to offer a holder of either form of policy a one-time opportunity to exchange the policy from one form into the other form, if a federal law is enacted, or the United States Department of the Treasury issues a decision, declaring that the benefits paid under long-term care insurance policies or certificates, that are not intended to be federally qualified, are either taxable or nontaxable as income.
- Provides for the emergency regulations to require insurers to allow exchanges to be made on a guaranteed issuance basis, but to allow insurers to lower or increase the premium, with the new premium based on the age of the policyholder at the time the holder was issued the previous policy, as specified.
- Provides for the exchange to be made by rider to a policy at the discretion of the department, and would also provide that policies may not be exchanged if the holder is receiving benefits under the policy or would immediately be eligible for benefits as a result of an exchange.
- Requires insurers to take certain actions to notify holders of these policies and certificates of the availability of the exchange option.
- Provides that those provisions apply only to a policy or certificate intended to be a federally qualified long-term care insurance contract.
- Requires that outline to include information regarding the toll-free telephone number of the Health Insurance Counseling and Advocacy Program.
- Provides that the cumulative premium credits allowed need not reduce the premium for the replacement policy or certificate to less than the premium of the original policy or certificate.

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***Year: 1999***

**SB 870** (Vasconcellos) 1999 Long-term care insurance:

- Makes various changes to those provisions, including changes clarifying an insurer's obligations to file, offer, and market policies intended to be federally qualified and policies that are not intended to be federally qualified;
- Changes mandating coverage for care in a residential care facility;
- Changes relating to coverage for preexisting conditions; changes regarding prohibited policy provisions and prohibited insurer actions in connection with policies; and
- Changes regarding the right of a policy or certificate holder to appeal decisions regarding benefit eligibility care plans, services and providers, and reimbursements.

**SB 475** (Dunn), Chapter 669, Statutes of 1999. Long-term care insurance: rate guide: data collection:

- Requires the Insurance Commissioner to annually prepare a consumer rate guide for consumers for long-term care insurance, as specified.
- Specifies the dates and methods for distributing the consumer rate guide.
- Requires each insurer to provide, and the Department of Insurance to collect, specified data on long-term care policies and certificates, including all policies, whether issued by the insurer or purchased or acquired from another insurer, in the United States, on or after January 1, 1990.
- Provides that the data collected are public records open to members of the public for inspection, unless they are a trade secret as defined.

***Year: 2000***

**SB 898** (Dunn), Chapter 812, Statutes 2000. Long-term care renewal provisions.

- Requires group long-term care policies and certificates to be either guaranteed renewable or noncancelable.
- Requires approval of the Insurance Commissioner before individual or group long-term care insurance may be offered, sold, issued, or delivered in this state, and would specify the duties of insurers and commissioner in this regard.
- Limits premium increases for these policies, as specified.
- Requires premium rate schedules and new policy forms to be filed with the commissioner by January 1, 2002, for all group long-term care policies to be sold on or after January 1, 2003, and for all previously approved individual long-term care policies to be sold on or after January 1, 2003, unless the deadline is extended by the commissioner.

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***Year: 2001***

**SB 455** [Effective January 1, 2002, SB 455 (Speier), Chapter 328, Statutes 2001, makes the following changes:

- Restores Section 10232.65 to the Insurance Code, which imposes limitations of one month (two months if interim coverage is provided) on the amount of premium that may be collected by a long-term care policy issuer with the application prior to the time the policy is delivered. Requires 60-day notification regarding issuance or non-issuance of a policy and an interest payment made to applicant for failure to notify.]

***Year: 2002***

**SB 1613** (Dunn), Chapter 675, Statutes of 2002. Long-term care insurance:

- Requires the evidence of the continuing education to be filed with and approved by the Insurance Commissioner for specified nonresident licensees.
- Requires, until June 30, 2003, the notification to be provided within 18 months if certain conditions are met.
- Specifies that an insurer is not prohibited from filing new group and individual policy forms with the commissioner after January 1, 2003.
- Authorizes an insurer that has filed premium rate schedules and new policy forms by March 1, 2002, to continue to offer and market long-term care policies approved prior to January 1, 2002, until 90 days after approval of the premium rate schedules and new policy forms or June 30, 2003.

**SB 1974** (Polanco) Insurance Policies, Chapter 358, Statutes of 2002.

- Authorizes the Commissioner to approve insurance policies and associated materials in languages other than English if certain conditions are satisfied.

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**I. Introduction and Overview**

A. What is Long-Term Care? Explain what Long Term Care is, what it actually is and what should not be included CIC §10231.2

1) Overview - Define long-term-care (e.g. services that are needed when an individual could no longer take care of themselves) CIC §10231.2
   a) Clinically
   b) Per California Statute

2) Describe the public policy issues pertaining to LTC in California

3) Discuss the conditions resulting in the need for care CIC §10232.8(c)
   a) Acute vs. Chronic Conditions
   b) The services and providers of care CIC §10232.9 (a)
   c) Who needs care and why CIC §10232.8 (a)(b)
   d) How services are provided and paid for (Information on the risks of needing and financing care should be fairly presented and not overstated)

Note: When referring to statistics, dollar amounts, charts and tables, please reference source and date. Must be California specific.

B. The Availability of LTC Services and Facilities (Describe the LTC CONTINUUM as it relates to the following) CIC §10232.9 & 10232.92
All LTC policies must comply with Chapter 2.6 of the CIC §10233.7

1) LTC Services Available
Range from skilled services by highly skilled personnel (e.g. physical therapist) to a lower level of care (e.g. personal care attendant) delivered by unskilled personnel

2) Describe the evolutionary process of chronic conditions as it relates to the delivery care and services provided

3) Where to obtain information on these services

4) Where are the services provided (Formal Care)
   a) Nursing homes
   b) Residential Care Facilities for the Elderly (RCFE)
   c) Continuing Care Retirement Communities (CCRC/LCC)
   d) Types of Adult Day Care facilities
   e) How and where to locate the facilities

5) Licensing Requirements of all LTC facilities. For instance, Assisted Living facilities are state-licensed facilities that provide a range of services, but they are not skilled nursing facilities. The distinction is important because agents must understand the places where a particular policy will pay benefits, and where it will not. What are the differences between these types of facilities and a residential care facility? CIC §10232.92
   a) Board and Care
   b) Assisted Living

C. Change or Improvements to Services and Facilities CIC §10232.9 & 10232.92

1) Changes in covered services related to definitions in policies

2) Changes in providers (licensed or not) related to definitions in policies
   a) Agents need to understand the continuing evolution of long-term care services and providers in the context of relating those changes to both old and new policy language. RCFE is a good example of a place of care that insurers are increasingly willing to cover in the policy, or willing to consider for the payment of benefits when it is not specifically covered. Adult Day Care is another. Earlier policies restricted benefit payment to only those facilities that provided Adult Day Health care, a much more restrictive definition. Another example is policies that covered home care, but required that services were needed because the person would require institutional care without them.

D. Home Care Providers of Home Care (Formal Care and Informal Care-service not paid for therefore the policy does not pay) CIC §10232.8 and 10232.9

1) Explain the difference between home and home health care (Range from highly skilled and licensed personnel to unlicensed, unskilled CIC §10232.9(a) (1)(3)(4)
   a) Where they come from
   b) How to locate them

2) Agents must be aware that newer policies cannot require the use of a state-licensed provider unless the state also requires a license for that provider. Insurance companies are permitted to make exceptions when the care specified in the policy can be delivered appropriately, and often for less money, in a place that may not be specifically described in that contract.

3) Agents must be taught to read older policies and understand why the services may be more restrictive than those described in the newer policies. They should be able

to explain this when an older policy is replaced, and be able to accurately identify the reason for replacement and whether it constitutes a material improvement in the agent certification statement on the application. CIC §10235.16

E. Historical Development of the Impact of California Legislation on Long Term Care and How the Legislation Interacted With Federal Long Term Care Insurance
CIC §10232.1 & 10232.2

1) LTC insurance that is found in Federal HR 3103, Health Insurance Portability and Accountability Act of 1996, Subtitle C, Part 1, Section 321, and in Division 2., Part 2., Chapter 2.6 of the CIC §10231.
2) The course material must describe the statutory language and explain what it means and how it applies to California LTC insurance and its consumers.

F. Give a definition of LTC insurance. Include the evolution of these products as nursing home policies during the 1970's and 1980's to the three types of policies permitted to be sold today.
1) Integrated pool of money based on benefit type and not length of stay
2) "Applicant" CIC §10231.4
3) "Certificate" CIC §10231.5
4) "Group LTC insurance" CIC §10231.6
   a) employer group
   b) trade group
   c) association group
   d) discretionary group
   e) Commissioner must investigate group's relationship to insurance
   f) ERISA (Employee Retirement Income Security Act of 1974). Exemption? (The Secretary of Labor will enforce these rules for self-insured [ERISA] plans - www.os.dhhs.gov/news/press/1996pres/960821.html)
   g) Group policies issued in other states
5) "Policy" CIC §10231.8

G. General Provisions
1) Products of out-of-state groups CIC §10232
2) Discretionary groups
3) Association groups
4) Must have primary purpose other than insurance

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**II. Statutory Policy Provisions, Requirements, and Terminology**

A. Agent Responsibilities

1. Requirement for Replacement Notice CIC §10235.16
   a) Application must contain questions
   b) Notice must be delivered before delivery of policy
      1) Mandated form of Notice
      2) Notice of 30 day free look
      3) Pre-existing conditions warning
      4) Contact your present insurer
      5) Warning: misstatement may = rescission
      6) Modify Notice if 30-day free look does not apply
      7) Disclaimer by agent and insurer: COMPARISON TO YOUR CURRENT COVERAGE: Replacement materially improves your position - reasons must be listed

2. Outline of Coverage (OOC) CIC §10233.5
   a) Company Responsibilities
      1) Freestanding document, 10 point type
      2) No advertising
      3) Mandatory OOC
      4) Minor changes are OK
      5) Mandatory OOC form:
         A. Individual or group
         B. Purpose. "Read your policy carefully!"
         C. Free look provision
         D. "This is not Medicare supplement coverage"
         E. Explain method of benefit payment (reimbursement, cash)
         F. Benefits, waiting periods, maximums, skill levels, triggers
         G. Limitations or exclusions
         H. Inflation protection features, if any
         I. Renewability, conversion continuation, premium changes
         J. Alzheimer's disease covered
         K. Total annual premium
         L. Additional features: medical underwriting, etc.
         M. Information and counseling 1-800-927-HELP (Department's LTC Guide and HICAP)

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3. Consumer Protection CIC §10234.8 – 10234.97
   a) Insurers, brokers, and agents; duty of honesty, good faith and fair dealing
   b) Replacement of long term care insurance unnecessarily; application
   c) Replacement sales and lapse rates; maintenance of agent records; reports
   d) Premium credits towards replacement policies or certificates
   e) Advertisements; commissioner's review; retention period; contact through cold lead device; disclosures to consumers
   f) Responsibilities of long-term care insurers with respect to marketing procedures, supplying list of agents, continuing education, buyer notification, inquiring about applicant's existing insurance, auditable procedures, insurance counseling, and insurance shoppers guide; unfair trade practices
   g) Suitability standards
   h) Replacement coverage; sales commission; basis on improvement of insured's position; applicability; definition; filing of commission structure

4. Group policies issued before 1-1-97, now Tax Qualified: Insurers must offer TQ coverage if Feds discontinue TQ status and insurer sells TQ policies CIC §10232.2(d)

5. Preexisting condition CIC §10232.4

6. Minimum standards for Home Care CIC §10232.9
   a) Six mandated elements of home care:
      1. Home Health Care
      2. Adult Day Care
      3. Personal Care
      4. Homemaker Services
      5. Hospice Services
      6. Respite Care
   b) Definitions of the mandated services
   c) Prohibited limitations
   d) Home care paid at 50% of daily nursing home benefit with $50/day minimum. Home care benefit must be at least 50% of durational maximum of nursing home benefit.

7. Nursing Facility benefit must cover "ancillary supplies and services" CIC §10232.95

8. Insurer must disclose possible tax consequences if pre-1997 insured requests "material modification" CIC §10232.96

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9. Nursing Facility benefit triggers CIC §10232.97
   a) Impairment in two Activities of Daily Living
   b) Impairment in cognitive ability

10. Insurers may verify necessity with any source of independent judgment. CIC §10232.8(c) & 10233

11. Benefits for LTC Contracts CIC §10233.2 – 10233.5
   a) Providers will be required to provide an expanded explanation of LTC plan benefits, design and variations. As many new features have been included by the state and federal legislation as well as ancillary features not required by legislation.
   b) Indemnity contracts/integrated contracts
      1) Must make the distinction between the three methods of pay reimbursement – (1) reimbursement, (2) cash, and (3) per diem CIC §10232.95
      2) Also mention somewhere the reimbursement/cash/per diem limit for tax-free benefits ($220 in 2003).
   c) Benefit periods (design/payout) CIC §10232.93 & 10233.4
   d) Dollar amounts CIC §10232.93
   e) Elimination periods – count days toward elimination – services vs. calendar days of implementation to the insured.
      1) Definition of "day" for home care purposes.
      2) Visits vs. calendar (today or tomorrow)
      3) Financial Examples - Explain what are out of pocket costs and how are the costs counted with inflation protection.
         A. Nursing Home
         B. Home Care
   f) Case management (TQ vs. NTQ) CIC §10232.8
      1) Assessment process
      2) Plan of care requirements
      3) Differentiate with "Care Advisory" that is found in CalPers and some group products issued outside California
   g) Bed reservation benefit CIC §10233.5
   h) Assisted living benefit offering (this is a requirement)
      1) Place
      2) Daily Benefit
      3) Out-of-State
   i) Restoration of benefit

j) Home modification CIC §10232.9
k) Caregiver training
l) Return of premium
m) Limited pay options
n) Waiver of premium CIC §10235.10
   1) Facility
   2) Home care
o) Option - Non-forfeiture benefits CIC §10235.30
   1) Statutory
   2) Other

B. Company Responsibilities
1. Terms and Conditions CIC §10235 – CIC §10236.15
   a) Application of article to policies after 1-1-90 CIC §10235
   b) Policy terms CIC §10235.2
      1) "Medicare"
      2) "Skilled nursing care" "intermediate care" "home health care"
      3) All definitions to be based on services, facilities, licensure
   c) Permitted exclusions and limitations CIC §10235.8
   d) Permitted Pre-existing Condition
   e) Claims Denial CIC §10235.9
      1) June 30th report: Number of claims denied and reasons
      2) 40-day written notice to insured of reasons for denial
      3) Denial rates by Insurer available to public upon request
   f) Consumer/Policy holder Right to appeal CIC §10235.94
      1) Benefit Eligibility
      2) Care Plan
      3) Services & Providers
      4) Reimbursement Amount
   g) No termination of coverage during claim
   h) Renewability provision in individual policies CIC §10235.14
      1) Signed acceptance for reformation
      2) Pre-existing conditions paragraph required
      3) Limitations paragraph required

2. Insurer must offer shortened benefit period non-forfeiture[1] CIC §10235.30
   a) Begins after 10 years
   b) Minimum policy benefits = three months non-forfeiture benefit



   c) Amount & frequency same as original policy terms

[1] Life policies with accelerated benefits or long term care are exempt from this requirement.

d) Policy benefit may be reduced by claims paid
e) Prohibited: return of premium, reduced paid-up and extended term
f) Lifetime maximum amount increases proportionally to number of years of premium payment.
g) Life riders accelerating benefits are exempt
h) Other type Non-Forfeiture benefits

3. Forgetfulness CIC §10235.40
   a) Applicant may designate another to receive notice of lapse. The insurer must receive either:
      1) Information on designee, or
      2) Verbatim waiver signed and dated
   b) Insurer must offer right to change designee, every two years
   c) Payroll deduction plan?
   d) Insurer must mail notice 30 days before termination
   e) Policy and certificate must include five-month reinstatement

4. Post claims underwriting prohibited
   a) Applications must ask 'yes or no' health questions. Warning on application that misstatements may result in rescission CIC §10232.3 (a)(b)(c)
      1) Every Application shall include a checklist
         A. Important notice regarding policies available
         B. OOC
         C. HICAP Notice
         D. LTC Insurance "CA" Consumer Guide
         E. LTC Insurance Personal worksheet
         F. Notice to Applicant Regarding Replacement
   b) If medical underwriting not complete, insurer may rescind only for fraud or material misrepresentation
   c) No field issue
   d) Contestability period shortened to two years
   e) Completed application must be delivered with policy. Insurers must file recessions annually

5. Eliminates prior hospital stay requirement CIC §10232.5

6. 30-Day free look CIC §10232.7



7. Insurers must provide RCFE coverage with facility and comprehensive LTC policies. Minimum benefit 70% of Nursing Home benefit CIC §10232.92 (b)

a) All expenses incurred by insured must be covered up to (but not to exceed daily maximum)
b) Benefit eligibility

8. Flexible benefit mandated (Policy Lifetime maximum must be stated in integrated pool of dollars) CIC §10232.93

9. Outline of topics for inflation protection in 8-hour LTC course shall include the following illustrations: CIC §10237.6
   a) Statutory Requirements CIC §10237.1
      1) applicant must be offered 5% annual compounded inflation adjustments in benefits
      2) applicant must sign statement refusing 5% annual compounded adjustments
   b) Past Increases in California Long-Term Care Costs
      1) show annual increases in California nursing home rates for past 15 years (Office of Statewide Health Planning and Development, OSHPD, data)
      2) compare annual increases in nursing home rates with consumer price index (CPI)
      3) show that annual increases in recent years have trended downward toward 5%, but still exceed CPI
   c) Cost of Nursing Home Care Today
      1) current nursing home average daily rates in California
      2) current nursing home daily rates in various California communities
   d) Estimate Life Expectancy for Applicants at Different Ages
      1) illustrate the average number of remaining years of life for different ages -- using California data
      2) point out half will live longer and half less than the average, but persons healthy enough to qualify for LTC insurance are expected to live longer than average
   e) Project Future Nursing Home Costs (NH) (for Daily Benefits and Average NH Stay of 2.25 years)
      1) calculate future costs using 5% compounded annual increases for 14, 20 and 30 years (note costs double every 14 years if increases are 5% compounded)
      2) illustrate daily and annual out-of-pocket expenditures between policies with a daily benefit equal to the average NH cost but without inflation protection and 5% compounded annual increases
      3) illustrate the daily and annual out-of-pocket expenditures between policies without inflation protection and 5% simple annual increases



10. Inflation Escalator And Benefit Increases CIC §10237.1
    a) Application of article CIC §10237

b) Insurer must offer Inflation Protection CIC §10237.1
   1) 5% compounded annually or
   2) Periodic options to increase or
   3) Percentage of charges
   4) Group policy offering CIC §10237.2
   5) Implications to clients on fixed incomes
c) Mandated offer goes to group policyholder CIC §10237.1
d) Accelerated benefits & expense incurred plans exempt CIC §10237.3
e) No limits on Inflation Protection (age, claim status, claim history, policy term) CIC §10237.4(a)
f) Insurer must offer *level premiums* if offering automatic increases CIC §10237.4(b)
g) No Reduction of Inflation benefit increase due to payment of claims CIC §10237.4(c)
h) Insurer must provide 5% compounded unless applicant signs rejection CIC §10237.5(a)
i) Rejection, verbatim CIC §10237.5(b)
j) OOC must include CIC §10237.6
   1) A 20-year graph contrasting IP with no IP
   2) Expected premium increases to pay for IP
   3) Illustration must be reasonable

**III. Statutory Provisions, Disclosures, and Prohibitions**

A. Outline of coverage (OOC) reflecting most current revisions SB 870 CIC §10233.5
   1) OOC delivered at solicitation
   2) Delivery before application (agents)
   3) Delivery with application (direct response)

B. Distinguish between groups and individual disclosure in certificates CIC §10233.6
   1) Description of principal benefits
   2) Exclusions, reductions, limitations
   3) Terms of policy and certificate continuation
   4) "Group master policy determines governing contractual provisions"
   5) Explanation of insured's rights re continuation, conversion replacement

C. Duty of honesty, good faith, fair dealing.
   This section has been amended as of 2000/SB 2107. CIC §10234.8



D. No unnecessary replacement. Presumption at 3rd policy in 12 months (A Material Improvement Statement form needs to be included.). In light of in-force rate increases,

carriers struggling financially we may want to develop some clear guidelines for agents when replacement is appropriate CIC §10234.85

1) Permitted commissions CIC §10234.97
   a) Replacement commissions -- difference between replacement and original coverage. Insurer must declare 'material improvement'
   b) Includes any kind of compensation
   c) Commission structure filed with commissioner within six months

E. Premium credits for replacement policies; 5% of prior premium (Life riders exempt) (amended 1999). Include an example. CIC §10234.87

F. Carrier Ratings
   1) AM Best
   2) Standard & Poor
   3) Moody's
   4) Fitch
   5) Weiss

G. Providers must be able to explain the implications regarding the various ratings as they relate to carrier financial standing and claims paying ability.

H. Prohibited provisions
   1) No discrimination based on individual's health CIC §10233.2
   2) No new waiting periods after conversion or replacement CIC §10233.2
   3) No preference for skilled care CIC §10232.2

I. Medical Necessity[2]* CIC §10233.9 (c)(7)

J. Prohibits termination due to a divorce

K. Distinguish between lifetime and unlimited benefits CIC §10232.93

L. No new preexisting conditions on replacement policies CIC §10232.4

M. No benefit reductions because of out-of-pocket expenditures CIC §10233.4

N. "Usual and customary" standard prohibited CIC §10232.2

O. Long Term Care Personal Worksheet CIC §10508.5

P. Replacement Policy Conversions CIC §10234.97
   1) Every insurer shall:
      a) Develop and use suitability standards
      b) Train its agents to use suitability standards
      c) Keep standards for review by commissioner
   2) Agent and Insurer shall consider:
      a) Affordability of coverage
      b) Applicant's LTC goals and needs



      c) Value, benefits and cost of existing vs. recommended coverage
   3) Agent and Insurer shall make reasonable efforts to determine suitability, including:
      a) NAIC Personal Worksheet in 12 point type at time of application

[2] Medical necessity is prohibited from claims payment.

b) Personal worksheet must be filed and approved
c) Disclosure of rate increase in any state
d) Comply with HIPAA Restrictions on privacy

4) Agent must return three completed Personal Worksheet to insurer (one copy for the insurer, one copy for the agent record keeping, and one copy for the consumer)
5) Disclosure of information on worksheet is prohibited
6) Insurer must rely on worksheet for appropriateness of coverage
7) Agents must use suitability standards in issuing
8) Agents must use suitability standards in marketing
9) Application may be rejected or Suitability Letter may be sent
10) Annual report: number of applications, number who declined to provide worksheet information, number who failed to meet suitability standards, number who conformed after suitability letter
11) Life riders exempt from this section
12) Understand how the companies' suitability policy guidelines determine when LTC insurance is not appropriate.
13) Rules governing replacement and consequences depend on when policy was issued.
14) Pre-1997 policy (issued before Dec 31, 1997) CIC §10232.2
    a) Tax Treatment: policies are "grandfathered" -- they receive the same tax benefits as the new policies that comply with the new law
    b) Eligibility for Benefits: eligibility triggers in pre-1997 policies may make it easier to qualify for benefits than required triggers in TQ policies.
15) Tax consequences of making "material modifications" to existing policies (discuss material modification rules in the Department of Treasury, interim guidance): CIC §10232.96
    a) Favorable tax treatment can be retained if the insurance contract specifically allows for the change in benefits requested by a policyholder -- e.g., add a non-forfeiture rider
    b) Favorable tax treatment can be lost if the change materially modifies the existing contract
16) Legal Consequences of Making Material Modifications: precludes insurers from making changes without notifying policy holder that such changes may jeopardize federal tax treatment. CIC §10232.96
17) Policy Issued After New California Legislation Becomes Effective (October 5, 1997). Conversion When Insurer Offers New Benefits or Eligibility Rules -- discuss circumstances under which policyholder would acquire right to convert to new policy CIC §10235.52(C)



18) Explain an insured's options when a group policy terminates.

## TOPICS TO BE INCLUDED IN 8-HOUR LONG-TERM CARE COURSES

a) Tax Treatment: policy does not qualify for favorable tax treatment unless exchanged for a new policy designed specifically to comply with both federal and state tax law and new California insurance law.
b) Insurer Procedures: most insurers promised purchasers they would be given option to convert once new policies become available.
c) Convert or Retain Existing policy? Depends on situation of each consumer. Considerations are the same as for consumer deciding now whether to purchase policy that is intended or not intended to be federally tax qualified (See comparison chart) [this section is in CE training outline should be deleted no later than Jan. 1999 as no longer relevant]

19) Requirement for Replacement Notice for direct response insurers (Mandated form of Notice) CIC §10235.18
20) Downgrading (amended 1999 SB 870) CIC §10235.50
21) Every policy or certificate must allow lowering premium by
    a) Reducing policy maximum or
    b) Reducing daily, weekly, monthly benefit or
    c) Converting to Nursing Facility Only or Home Care Only
22) Premium based on issue age and issue date
23) Inflation protection will continue
24) Insurer must notify of option to downgrade if lapse is imminent
25) Insurer must notify of option to downgrade if premium increased
26) Upgrading CIC §10235.51
    a) Every policy or certificate must allow increase in coverage by
        1) Increase in daily, weekly, monthly benefits
        2) Increase in policy maximum
        3) Increase all benefits in comprehensive LTC product
    b) Premium priced at attained age
    c) New coverage may be underwritten
27) Updating (amended 1999 SB 870) (Now that Exchange Letters are being used, a copy should be included with the course outline.) CIC §10235.52
    b) Policy provision must allow insureds to update if new benefits or eligibility developed by insurer
        1) Insurer must notify within 12 months
        2) Insurer must offer
            A. Rider, separate attained age premium or
            B. Replacement policy or
            C. Replacement at issue age premium
            D. Update may be underwritten



28) Insurer must offer to existing group policyholders

29) Future government long-term care program. Insureds may elect reduced premiums or increased benefits CIC §10235.91
30) Every individual policy must be Guaranteed Renewable or Noncancelable. Contents of renewability provision must be printed on page one CIC §10236
31) Continuation or conversion of group coverage CIC §10236.5
    b) Every certificate shall provide for continuation or conversion
    c) Definition of "continuation"
    d) Definition of "conversion"
    e) Authorized limitations under conversion
32) Requirements for replacement of group coverage (since 1992) CIC §10236.8
33) Updating (amended 1999 SB 870) CIC §10236.11
    a) Policy provision must allow insureds to update if new benefits or eligibility developed by insurer CIC §10235.52
        1) Insurer must notify within 12 months
        2) Insurer must offer new benefits or benefit eligibility
            A. Rider, separate attained age premium or
            B. Replacement policy or
            C. Replacement at issue age premium
            D. Update may be underwritten.
34) Insurer must offer to existing group policyholders CIC §10235.52(c)
35) Future government LTC program. Insureds may elect reduced premiums or increased benefits CIC §10235.52
36) Right to appeal (added in 1999/SB 870) CIC §10235.94
37) Reasonableness of benefits (added in 2000/SB 898) CIC §10236.1
38) Suitability Standards (Why and implications to Agent) CIC §10234.95
39) Minimum Loss Ratio is 60 percent
40) Personal Worksheet

## IV. Health Insurance Portability and Accountability Act (HIPAA)

A. Overview of HIPAA -
Health Insurance Portability and Accountability Act (HIPAA) - Federal health insurance legislation passed in 1996 that allows, under specified conditions, long-term care insurance policies to be qualified for certain tax benefits.

B. Insurers may offer non-TQ if they offer TQ products (Automatic repeal if CA policies become TQ under federal law) (Otherwise sunsets 7-1-2001, SB 527). All certificates and riders must comply with this chapter

C. Disclosure, TQ or Not TQ, on policy, OOC and application CIC §10232.25
    1) Products must be called "Nursing Facility and Residential Care Facility" CIC §10232.92



    2) Products must be called "Home Care Only" CIC §10232.1(c)

May be called "Comprehensive Long-Term Care" if both are included
CIC §10232.1 (d)

D. Non-TQ benefit triggers CIC §10232.8
   1) Impairment in two out of seven Activities of Daily Living (ADL) or Cognitive impairment
   2) ADLs are: eating, bathing, dressing, ambulating, transferring, toileting and continence
   3) "ADL impairment" means 'needs human assistance' or 'continual substantial supervision'
   4) "Cognitive impairment" defined
   5) Non-TQ definitions of the seven ADLs

E. TQ benefit triggers CIC §10232.8
   1) Chronically ill insured
   2) Impairment in two out of six ADLs - HIPAA complaint – consistent with the definition of a chronically ill individual for the purposes of deducting LTC expenses as a medical expense
   3) Severe Cognitive impairment
   4) If the federal government expand triggers, Department must issue emergency regulations
   5) TQ "Licensed health care practitioner" independent of insurer CIC §10232.8(c)
   6) "Chronically ill individual"
   7) Written plan of care
   8) Renew every 12 months
   9) Insurer may not deduct costs from policy maximum
   10) Shall apply only to TQ policies

F. TQ Definitions
   1) ADLs excludes Ambulating
   2) ADL impairment = 'substantial assistance (either hands-on or standby) due to loss of functional capacity'
   3) Cognitive impairment = 'needs substantial supervision due to severe cognitive impairment'
   4) Licensed Health Care Practitioner = MD, RN or LSW CIC §10232.8 (c)
   5) Plan of Care = needs + type, frequency, providers, cost
   6) Explain consumer exchange privileges in the event the federal Congress passes a law, or treasury rules on the taxation of benefits from non-tax qualified long term care insurance
      a) Exchange must be made on a guaranteed issue basis at original issue age
      b) Insurers would be allowed to adjust premiums if there is a disparity
      c) Exchange can be facilitated by rider or new policy



   7) Exchange would not be made if policyholder is receiving benefits

8) Use IRS Notice 97-31 for TQ definitions of:
   a) Substantial assistance
   b) Hands-on assistance/Standby assistance
   c) Severe cognitive impairments
   d) Substantial supervision (provider must be able to reflect the impact and implications of these definitions as they relate to TQ vs. NTQ and benefit eligibility in California) Special Note: Provider must be able to empirically demonstrate if any the differences in benefit eligibility of TQ vs. NTQ.
   e) TQ Definitions of the six ADLs
   f) Transferring may include ambulating activities

G. Substantial supervision (provider must be able to reflect the impact and implications of these definitions as they relate to TQ vs. NTQ and benefit eligibility in California)

H. Insurers may give applicant a time of solicitation verbatim TQ Comparison Chart *(this chart must be included into the material and must be the most current).* CIC §10232.25

I. Benefit Eligibility for TQ and Non-TQ

**V. Statutory Rate Stabilization**

A. Agent Responsibilities

1) Availability of a consumer Rate Guide (why and Implications to Agent) CIC §10234.6 & CIC §10236.11 –10236.15
   a) CDI/HICAP shall annually prepare a consumer rate guide for LTC Insurance.
   b) Explain different kinds of LTC Insurance and coverages available to consumers.
   c) Premium history of such Insurer
   d) Published each year effective 12/1/2000
   e) Modes of Distributions for Rate Guide CIC §10234.6(d)
      - HICAP (1/800-434-0222)
      - CDI toll-free number (1/800-927-HELP (4357))
      - CDI Internet Web Site (www.insurance.ca.gov)
2) Report in consultation with LTC task force CIC §10234.7
3) Personal Worksheet

B. Company Responsibilities - Rate stability is one of the most important regulatory issues in long term care insurance (LTCi). Unlike regular health insurance, LTCi prefunds an event that, for the most part, occurs once and later in life. Policyholders typically pay premiums for 15 years or more, before accessing benefits. Since many people are on fixed incomes when they need care, a large rate increase can often compromise their ability to retain coverage, laying waste to years of premium payments.

Though the NAIC has promulgated model regulations for rate stability, no state has enlarged on the NAIC rate provisions like California. While the NAIC Model places certain restrictions on rate increases, the provisions of SB 898 have extended these to include additional requirements and sanctions when insurers exceed specific benchmark amounts. These and other requirements to certify the adequacy of initial rate filings and requests for rate increases makes California unique and at the forefront of consumer protection in rate stability.

Course providers should demonstrate a thorough understanding of the provisions of the SB 898 and its effect on rates in California. In particular, course material should reflect:

1) A discussion of the issue of rate stability and why it is important;
2) The unique aspects of LTCi that give rise to rate inadequacy and how the failure to price properly can hurt consumers;
3) A review of the provisions of SB 898 and how they strengthen the NAIC provisions.
4) Rate history information for company - The 1996 National Association of Insurance Commissioners (NAIC) Suitability Standards is required to be used by every insurer and other entity marketing LTC insurance. Providers shall include a copy of the LTC Insurance Personal Worksheet in this section. The model language must be described, and providers must explain what it means and how it applies to the agent and California consumer. CIC §1234.95

**VI. California Department of Insurance**

A. Administration and Enforcement CIC §10234 - 10234.7
B. Authority to bring actions, assess penalties CIC §10234.2
   1. Authority to assess penalties
   2. Authorizes private right of action; orders reasonable attorney fees to prevailing party
   3. Authorizes actions by district attorneys, attorney general, city attorneys
C. Commissioner shall issue regulations, from time to time CIC §10234
D. Penalties CIC §10234.3
   1. Agent
      a) 250, agent's first violation
      b) $1,000, agent's subsequent or knowing violation
      c) $5,000 for inappropriate replacement
      d) Maximum $25,000 per violation
   2. Insurer
      a) $5,000, insurer's first violation
      b) $10,000, insurer's subsequent or knowing violation
      c) $10,000 to $500,000 for insurer's general business practice
   3. Penalties paid to the Insurance Fund

4. Non-penalty remedies CIC §10234.4
   a) Suspend/revoke agent's license
   b) Suspend insurer's Certificate of Authority
   c) Order to cease marketing or cease other activity
5. Notice and Hearing CIC §10234.5
   CDI retains rights for Administrative Procedures Act hearing
   a) Requirement for written notice to respondent
   b) Administrative Law Bureau hearing within 30 days
   c) Contents of final order
6. Lapse & replacement data CIC §10234.86
   a) Insurers must calculate data for each agent and maintain records
   b) Replacement sales relative to annual total sales
   c) Lapses relative to total annual sales
   d) June 30th report: agents with greatest lapse & replacement rate
   e) June 30th report: percentage of lapsed policies
   f) June 30th report: percentage of replacement policies
   g) Purpose of reporting is close review of agent activities
7. CDI must send sample policy materials to HICAP CIC §10233.9
8. Commissioner may waive any provisions in this article if it is in the best interest of the insureds CIC §10235.20

E. Reporting Requirements - Long Term Care 8-hour Continuing Education Requirement CIC §10234.93

**VII. Alternatives for Long Term Care Insurance**

A. Financial
   1. Life Insurance with Long Term Care Benefits
   2. Home Equity Conversion - Information can be obtained from the Senior Information & Assistant Program available in different counties
   3. Savings/Private Investment
   4. Annuities
   5. Viatical Settlements
   6. Medi-Cal - Not to be confined to the concept that if a consumer does not buy LTC insurance, they will ultimately spend all their money and go on Medi-Cal. Briefly explain all the available options. Moreover, it is very important to discuss who should not purchase
   7. Commercial Products - Reverse Annuity Mortgages (a current demonstration project under HUD Life Insurance products that contain LTC benefit options)
   8. Informal Care by Family or Friends
   9. Medicare:
      a) Brief overview of Medicare

b) Describe the LTC provisions of Medicare
c) Levels of care requirements and implications to LTC

10. Medicare Supplement - Brief overview and LTC implications if any
11. Taking no action
    a) No medical eligibility
    b) Pre-existing health condition
12. Family Premiums
13. Agents should be aware that the purchase of long-term care policy will not necessarily ensure that someone will avoid Medi-Cal when they need long-term care. Whether that is to their advantage or not depends upon the particular circumstances. People who are unlikely to be able to afford premiums, unable to absorb even a moderate increase are not appropriate purchasers, and the safety net of Medi-Cal may be their only option.
14. Referral to HICAP
    a) A short, accurate description of the program
    b) A current list of each program not older than six months (Refer to California Department of Aging (CDA) Web site, where current list is posted.)
    c) Agents are required to know the name, address and telephone number of the local program in the area in which they are selling

B. Alternative Living Settings/Arrangements
1. Retirement Homes
2. Life Care Communities
3. Family Care
4. Fraternal, Religious, Union Organizations



## VIII. Advertising Guidelines and Marketing Practices

The items listed below may be discussed throughout this outline and may also be discussed throughout the course study.

A. Advertisements must be filed: CIC §10234.9
1. "An insurance agent will contact you" if that is the case
2. When does an agent not have to file with the CDI? Can he/she run an ad saying that they sell LTCi? Can they send a letter to a client or prospect discussing the need for LTCi?
3. Agent must disclose cold lead source
4. Use of foreign language material

## TOPICS TO BE INCLUDED IN 8-HOUR LONG-TERM CARE COURSES

B. Marketing Guidelines (how these issue effect insurers, agents and consumers) CIC §10234.93
   1. Agent Responsibilities
      a) Fair and accurate comparisons
      b) No excessive insurance
      c) Try to determine applicant's existing coverage
      d) Must establish audible procedures
      e) Provide California Department of Aging shoppers guide prior to application
   2. Insurer Responsibilities
      a) Insurers file list of LTC agents, updated each six months
      b) Provide continuing education
   3) New licensees: 8 hours/year, then 8 hrs/license term
   4) Licensees: 8-hours/each-license term (Class content described. After 1-1-98, topics to include TQ vs. non-TQ, inflation protection and suitability standards)
      a) Notice: this policy may not cover all costs
      b) Written notice identifying local HICAP
      c) Added as unfair trade practices:
         1. Twisting
         2. High pressure tactics
         3. Cold lead advertising

## TOPICS TO BE INCLUDED IN 8-HOUR LONG-TERM CARE COURSES

### IX. Attachments

**Attachment I** - Tax Treatment of Long-Term Care Expenses & Long-Term Care Insurance - HIPAA (Public Law 104-191, 110 Statutes 1936, 2054 & 2063)

A. Must use State Standardized section on LTC Tax - attachment
   1. Provide Sample of 1099 LTC form and instructions
      a) Consumer implications
      b) Carrier implications
   2. Provide copy of tax form 8853

**Attachment II** – California Partnership for Long-Term Care
(Title 22, Division 3, Subdivision 1, Chapter 8 of the California Code of Regulations)

Must use State Standardized section on Partnership - attachment

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In any LTC courses, presentation of the problem, the products, solutions for the problem and information given on providers and services available must be neutral. Besides discussing the advantages of the LTC products, courses should focus on what the needs are and how the various products meet those needs. Any statistics used in LTC courses must be current, followed by a cite and should be taken from the original source. Copies of handouts, overheads, etc., must match the information in the course and be accompanied by an explanation of how they will be used. It is expected that any viable LTC courses proposed should by 8 hours in length so as to cover adequately all the required topics. A course on LTC product knowledge only does not qualify for LTC continuing education credit.